STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Americana Towers Condominium Association	)	
	)	
v.	)	**No. 05-0415**
	)	
Commonwealth Edison Company	)	

REPLY BRIEF ON EXCEPTIONS OF AMERICANA TOWERS CONDOMINIUM ASSOCIATION

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I. INTRODUCTION

Americana Towers Condominium Association ("Americana") responds to Commonwealth Edison Company's ("ComEd") brief on exceptions to the Administrative Law Judge's proposed order ("Order") in this matter. Specifically, Americana responds to ComEd's arguments as to Americana being switched to Rate 6T, too early or otherwise; overcharges for the period of August 12-September 13, 1993, and; ComEd's proposal to change the refund mechanism and schedule. Americana also provides further insight as to what may explain the elusive additional added building load, and the answer appears in ComEd's own documents.

II. THE ORDER'S INTERPRETATION OF COMED'S TTR STATEMENTS ARE CONSISTENT WITH THE EVIDENCE PRESENTED IN THE RECORD, BUT ADDITIONAL RELIEF CAN ALSO BE EXTRAPOLATED FROM THE RECORD.

Many of the assertions provided in ComEd's Brief on Exceptions are actually consistent with the Order's interpretation of the facts in the record, and show that Americana is entitled to more relief than previously accepted, as well as providing a concrete answer to the mystery of the elusive significantly added load in contravention of Americana's hypothesis contained in Americana's brief on exceptions.

Americana's first point as to why ComEd is incorrect in its conclusions, is that ComEd states that the "July 14 demand reading of 63.47 was taken from the 7/15/93 entry on the TTR to calculate the May-June and June-July bills. The difference between the 63.47 July reading and the May reading of 59.41 was 4.06." (ComEd Brief on Exc. pg. 7). However, Americana was unable to confirm this May reading of 59.41 from evidence presented in the record. The TTR's entered as ComEd exhibits do not provide any insight as to where the 59.41 was extrapolated. However, the TTR entry on 9-24-93 provides that the meter readings were changed, and the value of 67.53 was stated in the TTR to be applicable to the 5-13-93 meter reading for meter #979. (ComEd Ex. 2.1). Interestingly, the difference between 67.53 (the May 1993 value) and 63.47 (the July 1993 value) provide a value of 4.06, which when multiplied by 60 equals 243.6 KW. Nevertheless, this 243.6 KW was then used for the two month period from 5/13/93 to 7/14/93, or an average of 121.8 KW/month, which is exactly one-half of the actual billings than was used for each of those two months. This analysis is consistent with the Order in terms of its ultimate conclusion, and may be the answer to where the 4.06 was derived, although it is unclear how the demand could be less in a subsequent month (July) versus a previous month (May).

A review of the TTRs also shows other interesting items and provides further insight as to the genesis of the elusive additional load that Americana complains. On page 2 of ComEd Ex. 2.1, the July 15, 1993 TTR entry shows an E at the end of the string of numbers, which likely indicates an estimate, without the billings actually being marked as such. All numbers in the various strings of numbers have ten digits, but some contain an eleventh digit with an E at the end. Furthermore, ComEd Ex. 2.1 page 1 the 9-24-93 TTR entry shows that the removal readings were altered. The removal reading of the suspect meter #979 shows a value of 67.53 (the last 4 digits of the 11 digit number 27661P067.53). The TTR states "[p]lease correct the removal date on all 6 meters to 5-

13-93 and change removal readings as follows….67.53 (for meter #979)." Interestingly, since the 5-13-93 TTR is missing, taking the difference between the removal entry of meter #979 found on the 9-24-93 TTR entry, a value of 67.53, and the 9-21-93 entry date of the TTR showing a value of 73.83, provides a difference of 6.3. This difference of 6.3 multiplied by 60 equals 378.00 KW, which should correspond to the ENTIRE cumulative demand over the four month period, from 5-13-93 to 9-16-93. Therefore, averaging 378.00 KW divided by 4 equals 94.5 KW per month. For meter #979, Americana was billed for a total of 919.8 KW for those four months, from 5-13-93 to 9-16-93; Americana should have been billed for a total of 378.0 KW for that four month period. In actuality, ComEd billed Americana 243% over what it in fact demanded (919.8 KW/378.0 KW = 243.3%) or (229.95 KW/94.5 KW = 243.3%).

This, Americana suggests, answers only some of the questions as to the cause of the additional load being added to Americana's facilities, or at least as the additional loads for the four months beginning in May 1993, despite irrefutable evidence that no such load was added. Such insight demonstrates that ComEd likely made similar errors beginning in December 1992. A review of the applicable TTR's show conspicuously absent data with regard to meter reads – "actual" or otherwise. (*See* ComEd Ex. 2.1).

Nevertheless, on 9-16-93 meter # 979 was removed. On that date, the TTR shows a reading of 3485707383 (aka 73.83). This number is consistent with ComEd witness Scherer's Ex. 3.1, and the meter test results, although the Dial Reading only contains the first 5 digits of the reading. (ComEd Ex. 3.1). However, the Dial Reading containing only five numbers begs the question as to what were the final five numbers?

This analysis provides saleable proof of Americana's claim of approximate triple billed demands, and demonstrates how a meter can read correctly, but the resulting billing could be rendered incorrectly, as stated as a possibility by ComEd witness Scherer himself (TR. at 404). Furthermore, such analysis protects the sanctity of ComEd's meters recording correctly.

As stated in the Order in footnote 28, "when ComEd's IBS personnel received Americana's account, they received a baseline demand reading of 67.53 on meter #979, to use for re-billing demand under Rate 6T, beginning on May 13." Assuming that meter #979 was functioning properly, taking the May 1993 corrected value of 67.53 and the September value of 73.83 shows a difference of 6.3, which when multiplied by 60 totals 378 KW for the four month period, for an average of 94.5 KW per month, which helps explain where the elusive additional load appeared for the building that did not add any mechanical equipment over this time period, and with Americana's occupancy remaining consistent over the time as testified by Americana witness Rollins (Americana Ex. 3.0).

This information provides clear evidence of the multitude of ComEd errors on this account. However, there is no reason to believe that the TTRs did not also contain errors, both human error or otherwise, considering the fact that clerks inputted, altered and changed the data on the system to begin with. (*See* 9-24-93 entry in ComEd Ex. 2.1).

What is also noteworthy, is that ComEd took the two month interval demand reading of 4.06 and multiplied by 60 to get 243.6 KW and that demand was used as the billed KW for each of the three months on meter 979 when performing estimates. (*See* ComEd Brief on Exc. pg. 7-8). It should be noted that meter 979 was a cumulative meter, not capable of distinguishing on/off peak usage. (Americana Ex. 1.0, lines 104-

106). By applying the Maximum peak demand as the Billed Maximum Demand, defined in ComEd tariffs and in the record in ComEd Ex. 1.3 page 2, without knowing whether such Maximum demand peak actually occurred during the on peak hours, is suspect at best. Rate 6 provides that there is no charge for demand that occurs in off-peak hours. (Id.). Therefore, pursuant to ComEd's tariffs in effect at the time, applying the Maximum Demand without knowing when such demand occurred as the Billed Demand, ComEd charged Americana the maximum possible charge for this meter during this time period.

Furthermore, from the billings and the TTRs, to the extent cognizable, ComEd's Billing Clerk compounded her mistakes by ignoring the meter readings on the formerly billed CIS system, for the Rate 6 billings, when she retroactively estimated the demands and the energy on the newly billed IBS system, for the Rate 6T billings. Such billings by ComEd were not appropriately marked as estimates, even though it is clear from the record that such bills were, in fact, estimated as discussed in the Order (Order pg. 16). This estimating by ComEd is not new. Of the 93 months shown on Americana Ex. 1.1, ComEd estimated almost half of the months (43 of 93) many of which were consecutive months and some of which were not conspicuously marked, all a clear violation of 83 Illinois Administrative Code Section 280.80.

ComEd, for its part, spends the majority of its arguments on attacking the Order's "estimates" of billing at 121.8 KW as a reasonable computation of demand for May – July 1993 for meter 979. While Americana is prepared to accept the conclusions found in the Order, Americana argues that it is a more equitable solution to use the analysis above for the four months of demands of 94.5 KW, which inference is supplemented by the evidence contained in Americana Ex. 1.1 which shows the loads for that meter consistently accruing between roughly 60 to 110 KW. (See Americana Ex. 1.1). Americana still firmly believes that the foregoing inferences could reasonably be extrapolated to the previous five months as well, especially in light of the conspicuously missing data in the TTRs, and respectfully requests the ALJ consider same.

Nevertheless, the Order attempts to rectify the situation by computing billing at 121.8 KW for the computation of demand for meter 979 in both May-June and June-July. (Order pg. 17). In its brief on exceptions, Americana and ComEd made essentially the same argument as to associated usage but for differing purposes. ComEd's arguments in brief actually support Americana's and the ALJ's conclusion that the KW demands were over-billed. In either case, the KWH usage was also over-billed proportionately. A 50% reduction, refund grant, of KWs must accompany a 50% reduction, refund grant, of KWH, or else the Load Factors would not be consistent.

Also noteworthy is the fact that the TTRs were ComEd's most explained defense and used as their evidence to verify the accuracy of the recordings of meter #979 and its subsequent test result. The majority of ComEd witness Miller's verbal testimony attempted to explain more about ComEd's TTRs than necessary. ComEd had the opportunity but failed to explain how their TTRs verified the recording of 3 times the normal usage of demand and energy on meter #979 (from ~100 KWs to ~300 KWs) when not one KW nor one KWH was added to that service during the suspect 9 months from December 1992 thru September 1993. (*See* Americana Ex. 3). Also, within ComEd witnesses Miller's and Scherer's testimonies, their explanations about the validity of the TTRs and also about the meter test results were exhaustingly presented as facts; but the actual resulting rendered billings were shown to be invalid by the reality of these same facts, evidence and logic. ComEd witness Miller admitted that ComEd's Billing Clerk made mistakes (TR at 249-251), and ComEd witness Scherer admitted that ComEd's meters could record correctly but that the billings could still be incorrect. (TR. at 404).

As an additional point of clarification, ComEd is incorrect in reference to stating: "…the evidence of record shows that the demand on meter 979 exceeded 200 KW in three of four summer bill periods (starting in May-June and ending with the August-September bill period)" and again with stating [t]he demand usage on meter 979 was also over 200 KW for all billing periods prior to the four summer months in 1993." Notwithstanding Americana's arguments that such billings were incorrect, ComEd fails to apply its own definitions of its tariffs, found in the record in ComEd Ex. 1.3. The billing from 05/13/93 to 06/14/93 was the last of the eight non-summer billing periods. The first of the four summer billing periods is the first billing period which has a meter reading date ending on or after June 15th. (ComEd Ex. 1.3).

Finally, ComEd admits to switching Americana from Rate 6 to Rate 6T two months prematurely (ComEd Exceptions pg. 9), but again argues that Americana is barred from claiming a refund of the difference in energy charges between the two rates due to the "settlement" of this issue in 1994. (Id.). The ALJPO stated correctly that the agreement to settle certain disputes concerned the application of on-peak and off-peak issues, and such agreement has no relevance to the current issue. (Order pgs. 20-21). Such on/off peak dichotomy has never existed in Americana's claims in the present case. ComEd continues to argue that all issues were "settled" at that particular time without ever producing any sort of agreement, release or document evidencing such agreement. If anything, such arguments definitively prove that ComEd is not infallible and has made a multitude of mistakes with regard to billing Americana, conspicuously always in its own favor. Clearly, such claim is not time barred and the Order correctly interprets this issue.

Finally, the TTRs show that there is ample proof for the Order's conclusions that the demand for meter #979 was doubled (applying 4.06 x 60 = 243.6) for two months, instead of splitting that in half; secondly, the TTRs show that there is ample proof that Americana's conclusions that the demand for meter #979 was almost tripled (applying the average of 378.00 KW for the four month period instead of 919.8 KW over the four month time period). Clearly, Americana was over-billed; the question for the Commission is by how much.

Accordingly, Americana provides the following paragraph to be inserted into the Final Order:

> Therefore, Americana's interpretation provides additional relief for the inaccurately billed demand and associated usage consistent with the above. That is, the four months, 5-13-93 through 9-13-93, equals 94.5 KW each on the average. Similarly, the kilowatt hour usage should be reduced proportionally to maintain the reasonable historical load factors to which both Americana and ComEd both argue for in their respective briefs on exceptions. Correctly, the KW for Americana should have been 378.00 KW for the four month period, instead of ComEd's incorrect billing total of 919.80 KW. Therefore, by ComEd's own TTR records, ComEd over-billed Americana 541.8 KW for those four months, resulting in an overcharge, excluding taxes and interest, of $7,877.77 (541.8 KW x $14.54/KW = $7,877.77) for the demand potion of the bill. Americana shall determine the corresponding KWH usage decrease consistent with Section IIJ of this Order.

III. A SECOND REVIEW OF THE EVIDENCE SHOWS THAT AMERICANA IS ENTITLED TO ADDITIONAL REFUNDS CONCERNING THE OVERCHARGES FOR

BILLING MONTH AUGUST 12, 1993 TO SEPTEMBER 13, 1993

As pointed out in Americana's Initial Brief, the billed demand on Meter #G250980 ("Meter 980") was almost twice the normal historical for the period 8/12/93 – 9/13/93, and the associated kilowatt hours with this meter do not line up with the associated demand. (Americana Initial Brief pg. 20). The Order properly concludes that this was the fault of human error as the demand dial on Meter 980 was not properly reset. (Order pg. 20).

Similarly, a look at ComEd's TTR's add proof to Americana's contentions. According to ComEd Ex. 2.1, the 9-24-93 shows that all meters were corrected to have been removed on 5-13-93. The reading on meter number meter #980 on 5-13-93 was corrected to read 56.63, and looking at ComEd's TTR first entry of 9-21-93, the reading on meter #980 was 63.17 on 9-16-93. During that four month interval, from ComEd's own records, from 5-13-93 to 9-16-93, show that the difference in the readings on meter #980 was 6.54 (63.17 – 56.63 = 6.54). Using the multiplier of 60 results in a demand of 392.4 (6.54 x 60 = 392.4 KW). Therefore, the average demand during each of those four months, from 5-13-93 to 9-16-93 was 98.1 average KW per month, (392.4 KW/4months = 98.1 KW/month), which is coincidentally equal to exactly one half of the 196.2 KW that ComEd billed Americana for the one month period from 8-12-93 to 9-13-93, and is a consistent load with the other 93 non-disputed months for this meter shown on Americana Ex. 1.1. Furthermore, ComEd's TTR records show that not only did the demands during those four months correctly total 392.4, but ComEd billed Americana a total of 604.2 KW for those four months. Therefore, ComEd's TTRs show that ComEd over-billed Americana by 211.8 KW during those four months. Finally, ComEd not only over-billed Americana 98.1 KW during 8-12-93 to 9-13-93, ComEd over-billed Americana 211.8 KW for the entire four month period from 5-13-93 to 9-13-93.

Similarly, the usage (KWH) were similarly over-billed. At 98.1 KW of demand would result in an impossible 120.3% load factor with respect to meter #980. Meter #980 was exchanged three days later, and the KWH and KW were recorded accordingly to a 60% to 80% load factor for the subsequent billing months.

ComEd's arguments do not necessarily address the above points but focus instead on ComEd rectifying a different error during that time period, as well as inserting information regarding billing clerk practices which were not part of the record. (ComEd Brief on Exc. Pg. 11). In essence, ComEd admits to not only their billing function executing mistakes on this account, but their meter reading department as well.

This particular bill submitted by ComEd to Americana was estimated, and appropriately marked as such. (Americana Ex. 1.1). In its estimate, ComEd re-billed Americana in October 1993 by averaging 131.4 KW (the period between August 12 to August 26 1993, with 261 KW (the period from August 26 to September 16, 1993. ComEd actually states that it was essentially doing Americana a favor by billing the average instead of the peak demand for that period. (ComEd Ex. 3.2; ComEd Brief on Exc. Pg. 10-11). ComEd fails to recognize that, unlike KWHs of energy, KWs of demands cannot be averaged on a daily basis within a period and then extrapolated out for that entire period. For example, if ComEd's meter reader took a reading on meter #979 the first day of the billing month and registered 100 KW, then took a reading 24 hours later again registering 100 KW, the estimated or extrapolated demand would not be 3,000 KWs for that 30 day billing period; it would likely result in a billed demand of close to 100 KWs for the entire month, (with consistent daily loads). If that customer had 100 KWs of load every day, they would receive an electric bill for 100 KWs of demand for the entire monthly billing period.

ComEd also did not address the fact that 261 KW is virtually double the previous period's demand and as such, is suspect as to whether the demand was actually reset. Clearly, a look at Americana Ex. 1.1 shows ninety plus months of demand on this particular metered load, and the value of 131.4 KW provided in the Order, or 98.1 KW as provided by Americana, are within the tight range of demands for this particular load and provide a fair approximation of the peak load during this time period. Accordingly, the Order should be affirmed as written, or modified consistent with the above arguments.

Accordingly, Americana submits the following paragraph for inclusion in the Final Order consistent with its above arguments:

> Similarly, a look at ComEd's TTR's add proof to Americana's contentions. According to ComEd Ex. 2.1, the 9-24-93 shows that all meters were corrected to have been removed on 5-13-93. The reading on meter number meter #980 on 5-13-93 was corrected to read 56.63, and looking at ComEd's TTR first entry of 9-21-93, the reading on meter #980 was 63.17 on 9-16-93. During that four month interval, from ComEd's own records, from 5-13-93 to 9-16-93, show that the difference in the readings on meter #980 was 6.54 (63.17 – 56.63 = 6.54). Using the multiplier of 60 results in a demand of 392.4 (6.54 x 60 = 392.4 KW). Therefore, the average demand during each of those four months, from 5-13-93 to 9-16-93 was 98.1 average KW per month, (392.4 KW/4months = 98.1 KW/month), which is coincidentally equal to exactly one half of the 196.2 KW that ComEd billed Americana for the one month period from 8-12-93 to 9-13-93, and is a consistent load with the other 93 non-disputed months for this meter shown on Americana Ex. 1.1. Furthermore, ComEd's TTR records show that not only did the demands during those four months correctly total 392.4, but ComEd billed Americana a total of 604.2 KW for those four months. Therefore, ComEd's TTRs show that ComEd over-billed Americana by 211.8 KW during those four months. Finally, ComEd not only over-billed Americana 98.1 KW during 8-12-93 to 9-13-93, ComEd over-billed Americana 211.8 KW for the entire four month period from 5-13-93 to 9-13-93.

IV. COMED'S PROPOSALS OF "OTHER EXCEPTIONS" INCLUDING ITS PROPOSAL TO ALTER THE ORDER'S REFUND MECHANISMS AND SCHEDULE SHOULD BE DENIED

On page 12 of its brief on exceptions, ComEd proposes four exceptions to the Order. ComEd's first through third proposed exceptions relate to arguments otherwise contained in the first two sections of ComEd's brief. All should be denied.

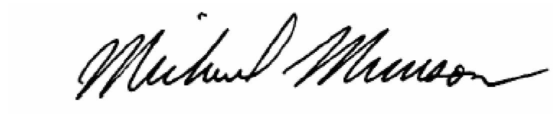
ComEd's fourth exception proposal is to alter the Order's Refund Mechanism and Schedule without providing relevant reasons for such alteration. ComEd's proposal should be denied. As stated in the Order, in order to minimize and avert confusion and disputes, Americana will provide applicable reimbursement calculations to which ComEd will be provided the ability to challenge such calculations. Such process is simple, fair and reasonable, and accordingly should be affirmed.

V. CONCLUSION

WHEREFORE, Americana respectfully requests that the Administrative Law Judge and the Illinois Commerce Commission deny ComEd's exceptions, and that a Final Order be adopted in this proceeding consistent with Americana's arguments contained herein.

Respectfully submitted,

AMERICANA TOWERS
CONDOMINIUM ASSOCIATION



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